

**REMARKS**

Claims 1-8 are now pending in the application.

In the Final Office Action, claims 1-3 and 6-7 were rejected under 35 U.S.C. 102(e) as being anticipated by Klinker (US 2007/0140128). Claim 4 was rejected under 35 U.S.C. 103(a) as being obvious over Klinker in view of Hernandez-Valencia (US 6,266,327) and claim 5 over Klinker in view of Aoki (US 6,757,255)

Klinker describes a data director 220 that moves a data flow 201 from a current path to another path, such as from NSP1 to NSPn, or from a first path of NSP1 to a second path of NSP1, when the data director 220 receives a routing change from the configuration element 211. (Paragraph [0075].) The data director 220 thus functions to distribute traffic to multiple NSP's (Network Service Providers).

In contrast, the present invention provides means for acquiring a packet 1b, as shown in Fig. 1, where in the means receives packets arrived at the network interface 1a and forwards the packets for packet analysis, unless the packets do not have to be stored. The means for acquiring a packet is provided for forwarding to or storing the received packets in other components in the apparatus, and does not distribute the packets among NSPs.

A second distinction relates to the passive calibrator 203 described in Klinker, which monitors the data traffic of the data flow 201 and communicates information related to the traffic and to traffic performance to the controller 205. (Paragraph [0067].) The passive calibrator according to Klinker is configured to

receive network communication data such as customer network traffic.  
(Paragraph [0082].)

In contrast, the present invention uses means for calculating state information 1d which creates state information regarding the transmitting or receiving state, with header information and payload information of the packet. This includes the TCP connection information. As recited in claim 5 of the application, TCP connection information may be considered to correspond to network preference, however, in this case the means for calculating state information is not directed to monitoring data traffic.

A further distinction between the invention and Klinker regards the flow policy repository 218 described in the reference, which stores and communicates the policy information or rules to govern the performance and cost of each data traffic. (Paragraph [0065].) Klinker describes that the flow policies include service level agreements and performance metrics. (Paragraph [0135].)

In contrast, the present invention includes means for storing nonconformity information 1i that function to save the information featuring the nonconformity in at least one process in the protocol. Some specific examples of data featuring the nonconformity include a conditional formula regarding the TCP connection information, a conditional formula regarding the packet header information, and a combination thereof. Therefore, the content to be stored according to the claimed invention is different from that described in Klinker.

An additional distinction exists between the claimed invention and the Klinker reference. The controller 205 described in this reference monitors flow

characteristics as well as flow policies to be enforced, so that when a flow policy is violated, it selects a remedial action to resolve the violation.

According to the present invention, the means for comparing 1h compares the state information and the nonconformity information to detect the nonconformity in the received packet. The means for comparing 1h thus detects that there is a problem, but does not detect a violation of a flow policy.

In view of the foregoing discussion, applicants respectfully submit that the elements of the claimed automatic detecting apparatus for protocol nonconformity are different from the flow control system described in Klinker. Klinker describes how to effectively and efficiently control routing of data over multiple networks. (Paragraph [0010].) In contrast, the present invention claims an automatic detection apparatus for protocol nonconformity, which determines whether there is a problem or fault in a protocol by use of the received packets, but does not perform flow control.

Hernandez-Valencia and foster also fail to provide the elements missing in Klinker. Accordingly, applicants respectfully submit that claims 1 and 6 are neither anticipated nor obvious, and are allowable. The remaining pending claims depend from allowable claims, and at least for that reason are also submitted to be allowable. Applicants thus submit that the application is now in condition for allowance.

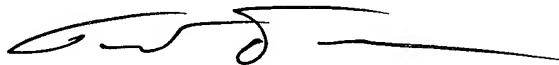
No new issues requiring a new search are introduced in this Reply, since the claims have not been amended. Reconsideration of the application and allowance of the claims is thus respectfully requested.

If there are any questions regarding this response or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1323 (Docket # 010755.52992US).

Respectfully submitted,

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